

JAN 12 1983

ALEXANDER L. STEVENS  
CLERK

NO. 82-5902

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1982

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RUFUS EUGENE STEVENS,

Petitioner,

-VS-

STATE OF FLORIDA,

Respondent.  
  

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RESPONSE TO  
PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF FLORIDA  
  

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COUNSEL FOR RESPONDENT

QUESTION PRESENTED

WHETHER THIS COURT HAS JURISDICTION  
PURSUANT TO 28 U.S.C. §1257(3) WHERE  
THE PETITIONER HAS NOT DEMONSTRATED  
THE ISSUES RAISED WERE PRESENTED TO  
AND DISPOSED OF BY THE COURT TO WHICH  
THE PETITION IS DIRECTED.

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### OPINION BELOW

The opinion of the Supreme Court of the State of Florida which is sought to be reviewed is reported as Stevens v. State, 419 So.2d 1058.

### JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) and to the extent that a substantial federal question was properly raised by Petitioner and disposed of by the Florida Supreme Court this Court has jurisdiction.

### CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED

The statutory provision involved, in addition to those specified in the petition, is 28 U.S.C. §1257(3), which provides:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

### STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as set forth on page three of the petition for the purpose of answering said petition. Additional facts are contained in the written opinion of the Florida Supreme Court. Respondent wishes to add that no where in the Florida Supreme Court's opinion is there any discussion or resolution of the constitutional claims presented to this Court by Petitioner. This is because Petitioner did not raise these issues. The only claim which he advanced was that the trial judge erred in overriding the jury's recommendation under the standards announced in Tedder v. State, 322 So.2d 908,

910 (Fla.1975) which this Court validated in Dobbert v. Florida, 432 U.S. 282, 295 (1977). The Florida Supreme Court merely held the trial judge did not err in rejecting the jury recommendation because there were four aggravating circumstances and no mitigating circumstances.

REASONS WHY THE WRIT  
SHOULD NOT BE GRANTED

Respondent submits that without regard to the merits of the claims presented, which it will not discuss at this time, the petition must be dismissed for want of jurisdiction. Cardinale v. Louisiana, 394 U.S. 437 (1969) and Webb v. Webb, 451 U.S. 493 (1981).

Notwithstanding the explicit requirement of Rule 23(1)(f), Rules of the Supreme Court, that the petitioner specify "in the statement of the case . . . the stage in the proceedings in the court of first instance and in the appellate court, at which, and in the manner in which, the federal questions sought to be reviewed were raised. . ." that has not been done in this case. This deficiency is due to the fact that the purported federal questions were not presented to the Florida Supreme Court. Because they were not presented they obviously were not disposed of by that court.

In Webb v. Webb, supra, this Court dismissed for want of jurisdiction a petition for certiorari where the record failed to disclose the federal question was presented to the Georgia Supreme Court and disposed of by that court. This Court said:

". . . It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system. . . ."

451 U.S. 496.

See also: Cardinale v. Louisiana, supra, at 438 (writ dismissed for want of jurisdiction after briefing and oral argument where record showed issue not presented in the state court).




In view of this deficiency and the fact that Respondent cannot confer jurisdiction on this Court, it must take the position that the petition for writ of certiorari must be denied on jurisdictional grounds. For obvious reasons, but for this legal impediment Respondent would address the merits, urge that the writ issue and ask that the judgment and sentence be summarily affirmed.

#### CONCLUSION

Petitioner has totally failed to demonstrate this Court has jurisdiction to entertain the petition for writ of certiorari and unless he can do so, the petition must be dismissed.

Respectfully submitted,

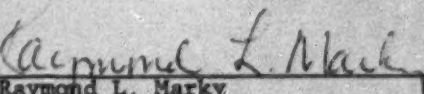
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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been forwarded to Mr. Patrick M. Wall, 36 West 44th Street, New York, NY 10036, via U. S. Mail, this 10th day of January 1983.

  
Raymond L. Marky  
Assistant Attorney General